

HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL

CASE

NO.2158/2008

BHEKIWE DLAMINI

(BORN HLOPHE)

PLAINTIFF

AND

SANDILE XAVIER FRANCIS

DLAMINI

RESPONDENT

CORAM

MAPHALALA PJ

FOR THE PLAINTIFF

MR. M, MABILA

FOR THE RESPONDENT

MR. M.J. MANZINI

JUDGMENT

29th MAY

2009

[1] The Applicant herein seeks, *inter alia*, under a certificate of urgency for an order against the Respondent in the following terms:

"Directing the Respondent to forthwith allow the Applicant access to the parties matrimonial home situated at Portion 204 Farm 2 in the urban area of Mbabane, District of Hhohho."

[2] The application is founded on the affidavit of the Applicant who has set the background of the dispute. A number of annexures are also filed thereto.

[3] The Respondent has filed his opposition in an answering affidavit where a point of law *in limine* regarding urgency has been raised in paragraphs 3.1 to 3.5 thereof. In view of the fact that so much time has elapsed from when the matter was heard in November, 2008 I do not think it is proper to consider the pros and cons of this point. The matter ought to be dealt with in the long form.

[4] The nub of the case between the parties is whether a wife should be granted access of the matrimonial home pending final separation or divorce. The parties are husband and wife married in terms of Swazi Law and Custom. Various meetings by the respective families

have been held to resolve the matrimonial impasse without any success.

[5] The matrimonial home which is at the centre of the dispute is registered under a trust with their children as beneficiaries and they are trustees thereof, and at all material times the premises were used as the matrimonial home.

[6] Furthermore at Clause 26 of the Rotarial Deed of Trust and Deed of Transfer the parties agree and submit to the exclusive jurisdiction of the High Court of Swaziland on any other court of competent jurisdiction within the Kingdom of Swaziland. In the argument before me no point was taken that the court did not have jurisdiction in view of the marriage between of the parties.

[7] In the present case the husband is occupying the matrimonial home.

[8] Having considered the arguments of counsel on this point I have come to the considered view that the wife should have access to the matrimonial home. There is ample legal authority than none of the parties has a right to evict and or refuse the other access of the matrimonial home.

[9] Sachs J in MINISTER OF HOME AFFAIRS VS FOURIE ET AL 2006 (1) SA 524 CC at page 551 stated the following:

"1/... another invariable legal consequence of the marriage is the right of both parties to occupy the joint matrimonial home. This obligation is clearly based on the premise that spouses will live together. The party who owns the home may not excuse or evict the other party from the house."

[10] On the basis of the above legal authority the present Applicant bears no onus or need to give any reasons why she requires access. Her right to be afforded unlimited access is a legal consequence of the marriage and as such it does not assist Respondent to say Applicant must provide a list of the items she wants.

[11] In the result, for the foregoing reasons the application is granted in terms of prayers 1, 2, 3, 4 and 5 of the notice of motion.

S.B. MAPHALALA
PRINCIPAL JUDGE